

STATE OF OHIO
COUNTY OF MAHONING

) IN THE COURT OF COMMON PLEAS
) SS.
CASE NO. 2015 CR 538

STATE OF OHIO

Plaintiff

-vs-

MARQUAN TREVAIL WHITE

Defendant

) DEFENDANT'S

) TRANSCRIPT OF PROCEEDINGS

) MOTION HEARING

APPEARANCES: Atty. Dawn Cantalamessa
Atty. Shawn F. Burns
On behalf of the State

Atty. Thomas E. Zena
Atty. Andrew R. Zellers
On behalf of the Defendant

Atty. James R. Wise
On behalf of Kalilo Robinson

BE IT REMEMBERED that at the hearing of the above-entitled cause, in the Court of Common Pleas, Mahoning County, Ohio, beginning on the 5th day of April, 2016, and continuing thereafter, as hereinafter noted, before the Honorable Lou A. D'Apolito, the above appearances having been made, the following proceedings were had:

EXHIBIT

B

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MAHONING COUNTY YOUNGSTOWN, OHIO

1
2 MS. CANTALAMESSA: We are here in Case
3 Number 15 CR 538, State of Ohio versus
4 Marquan White. Your Honor, we are here this
5 afternoon on, I guess, State's motion to take
6 the deposition of one of the State's
7 witnesses. We do have that witness here.
8 It's our understanding that the witness' wish
9 was to claim the Fifth Amendment and so we
10 are having this hearing in order to
11 straighten that out.

12 THE COURT: Okay. Is that correct?

13 MR. ZELLERS: Yes, it is, Your Honor.

14 MS. CANTALAMESSA: Your Honor, at this
15 time the state would call Kalilo Robinson to
16 the stand.

17 THE COURT: Okay. Let's get
18 Mr. Robinson on the stand.

19 MR. ZENA: We are not conceding that
20 this gentleman is, quote, unavailable and
21 therefore a deposition is in order, but it
22 seems to be the vehicle to get us to the end.

23 THE COURT: Okay. How are you doing?
Come on up here.

3

1 WHEREUPON, the State called
2

3 KALILO ROBINSON,
4

5 who, being first duly sworn testified
6 as follows:
7

8 THE COURT: All right. Come on up here
9 and sit down.
10

11 Here present in court Mr. Zena and
12 Mr. Zellers and their client.
13

Madam Prosecutor?

13 MS. CANTALAMESSA: Thank you, Your
14 Honor. Good afternoon.
15

THE COURT: Good afternoon.

16 EXAMINATION

17 BY MS. CANTALAMESSA:

18 Q Would you please state your name for the
19 record?
20

A Kalilo Robinson.
21

Q I'm sorry?
22

A Kalilo Robinson.
23

THE COURT: You have to speak up

1 Mr. Robinson, okay?
2

3 **THE WITNESS:** Kalilo Robinson.
4

5 Kalilo Robinson; is that correct?
6

7 Yes.
8

9 And how old are you, Kalilo?
10

11 I'm 19.
12

13 Nineteen?
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15 **THE COURT:** Mr. Robinson, you have to
16 speak up. I can't hear you. Again, your
17 name was, Mr. Robinson?
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19 **THE WITNESS:** Kalilo Robinson.
20

21 **THE COURT:** There we go.
22

23 Q And how old are you?
24

25 A Nineteen.
26

27 Q Mr. Robinson, could you tell us what happened
28 on November 16 of the year 2014?
29

30 A I plead the Fifth.
31

32 Q You plead the Fifth Amendment?
33

34 A Yeah.
35

36 Q And are you refusing to testify concerning
37 that event?
38

39 A Respectfully, I am.
40

41 **MS. CANTALAMESSA:** Your Honor, at this
42

1 time I would give to the Court a motion to
2 compel this witness to testify and an offer
3 of immunity.

4 THE COURT: I have just been handed
5 what's been titled with this caption of the
6 State versus Marquan White, Motion to Compel
7 Witness to Testify. It says, "Now comes the
8 State of Ohio, by and through the Assistant
9 County Prosecuting Attorney of Mahoning
10 County, and hereby moves this Court to order
11 the witness, Kalilo Robinson, to testify
12 concerning facts which are material to the
13 instant case. Pursuant to the request, the
14 State will grant immunity to this witness
15 pursuant to Revised Code Section 2945.44."

16 And this motion was provided to -- a
17 copy as a preview to the counsel, Mr. Wise
18 for Mr. Robinson; and Mr. Robinson and
19 Mr. Wise had the opportunity to meet and
20 discuss whatever it is the attorney felt was
21 necessary for his client to understand.

22 Mr. Wise, you had that conversation with
23 your client; is that correct?

1 **MR. WISE:** That is correct, Your Honor.
2

3 **THE COURT:** And based on this Motion to
4 Compel, what is your posture as regards your
client?
5

6 Mr. Zena, do you want to say something?
7

8 **MR. ZENA:** The only thing I wanted to
9 say, and I think I have standing to say this
given the fact that I have a defendant that
will suffer consequences.
10

11 **THE COURT:** Sure.
12

13 **MR. ZENA:** Unless I am mistaken, I have
done this in the federal system, this is an
offer to move for immunity.
14

15 **THE COURT:** Yes.
16

17 **MR. ZENA:** You are the only one who can
grant immunity.
18

19 **THE COURT:** Yes.
20

21 **MR. ZENA:** And mostly what happens -- I
have seen in criminal culpability cases where
immunity is granted by a Judge, a Judge makes
inquiry into what acts are you asking me to
bar this man for prosecution for. The John
Gotti case is a perfect example of that.
22
23

When the other defendant who was charged with many murders, their offer of immunity was extended, and they had to get into an entire evidentiary hearing on what acts he was going to be immune from prosecution on. So it's my argument that immunity would require your approval.

THE COURT: I think we all understand that, but I do think that it is necessary for the state to indicate what it is immunity is granted. In this particular statute, as I see it, and I may be wrong -- and you, of course, can correct me -- this is a transaction of immunity which is the type we are dealing with rather than any others.

So with that being said, Madam Prosecutor, would you wish to place on the record what it is you are granting this young man immunity from?

MS. CANTALAMESSA: Your Honor, we are granting immunity to Mr. Robinson for the murder of Antwon Martinez on November 16, 2014.

1 THE COURT: Mr. Wise?

2 MR. WISE: I have nothing.

3 THE COURT: Mr. Zena?

4 MR. ZENA: Well, the only thing I can
5 say is, again, we feel we have standing given
6 the fact that I know of nothing -- nothing
7 that says this man in any of the evidence is
8 implicated and could be found guilty of that
9 case anyway. I mean, they have to give us
10 that evidence so that we could impeach this
11 man, and we have received nothing saying that
12 he is guilty of anything in that case. So I
13 guess he is being offered immunity I don't
14 know what for because he has no criminal acts
15 alleged against him for that, none
16 whatsoever. I mean, the only thing he said
17 in his statements was that he was there, but
18 in his statements he doesn't say anything
19 about being involved in it at all, and I have
20 no evidence that he has been involved in this
21 at all.

22 MS. CANTALAMESSA: Your Honor, from the
23 beginning he has always said that he knew

that Antwon was going to be killed from Mascarella but he didn't know when. He said that on at least two occasions, so he has always said that. Now we are now hearing that he is claiming the Fifth, so he obviously feels that he has some incriminating evidence against himself that he doesn't want to reveal. So that's the purpose in claiming the Fifth. So we are offering him immunity for that murder to find out what that information is.

THE COURT: Mr. Wise, your response and your client? If you need time to talk to your client?

(WHEREUPON, a discussion was had between Mr. Wise and Mr. Robinson off the record and out of the hearing of the rest of the participants, after which the proceedings continued as follows:)

MR. WISE: My client will advise you that even with the immunity that he chooses not to testify.

THE COURT: So as of this point we have

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a witness who is available and refuses to testify and a witness has asserted the Fifth Amendment. And the state is moving for the Court to grant this defendant immunity from any of the acts that he may have participated in regarding --

MR. ZENA: Excuse me, Your Honor. Just for the record purposes, he is not technically a defendant here. He is only a witness here.

THE COURT: You are correct.

MR. ZENA: Thank you, Your Honor.

THE COURT: In this particular case you are correct, he is called as a witness. Yeah.

So the state has indicated that he made some statements that he knew that a murder was to occur, and that he was present at the time and place of a murder, and that the state believes that -- I'm assuming, and you are going to have to help me a little more, Madam Prosecutor -- that there are some acts he may have committed. And are you telling

the Court that one of those acts may be a complicity to murder, or conspiracy to murder, or do you have any evidence of that?

MS. CANTALAMESSA: Well, what we are hearing is that if these things that he would have to say to us today would, in fact, be complicity, we are offering him that immunity because with him claiming the Fifth, we don't know what is incriminating. He hasn't given any sort of incriminating statement against himself except for being present and knowing about it. That's about it. But if he is saying he has further evidence that would incriminate himself, we are offering him immunity for that, and we want to be sure that he knows that, and we want you to compel his testimony. We want you to order him to testify.

MR. ZENA: The sum of that seems to be if he did any acts, which we can't prove he did, he would be offered immunity for those acts, but we can't prove that he did any of them. That's basically what she said.

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2 MS. CANTALAMESSA: Well, the defense is
3 talking in circles as well --
4

THE COURT: Yeah.

5 MS. CANTALAMESSA: -- because but for
6 this witness giving a statement to the
7 police, his client wouldn't even be charged.
8

9 MR. ZENA: But this isn't about -- I'm
10 sorry, Your Honor -- this isn't about my
11 client now. This is about what position he
12 holds on that stand.

13 THE COURT: Mr. Robinson?

14 MR. ZENA: That's correct. This isn't
15 about him at all. This is about offering
16 immunity to somebody in case there are
17 acts -- which they don't know exist, can't
18 prove -- but if there were, he is immune from
19 them. That's not immunity, Judge.

20 MS. CANTALAMESSA: It is immunity if we
21 can corroborate those acts, and we won't know
22 about it until he tells us.

23 MR. ZENA: We are going in circles.

THE COURT: Yeah, we are going in
circles.

1
2 Mr. Wise, anything you want to add?

3 MR. WISE: Your Honor, with all due
4 respect, and what I have heard on the record
5 this morning, first of all, I understand that
6 this matter is a pretrial hearing.

7 THE COURT: Yeah.

8 MR. WISE: In fact, this matter -- we
9 are not in trial -- that he is obviously
10 available if this was a trial.

11 THE COURT: Uh-huh.

12 MR. WISE: It's my understanding that
13 the Court is attempting to possibly
14 circumvent -- not circumvent his rights, but
15 to try and figure out what's going to happen
16 in the event of a trial if he refuses to
17 testify or that the prosecutor, in fact, is
18 trying to figure out what she can do if, in
19 fact, he refuses to testify, as he has
20 indicated that he will, as he has indicated
21 to all of us he will. However, I don't
22 believe that even with the granting of
23 immunity by this Court, even if he continues
to refuse to testify, he is not in contempt

1 since this matter -- we're not in trial. If,
2 in fact, we had a jury impaneled and my
3 client was, in fact, subpoenaed to be here
4 and then refused, I think at that point he
5 could be held in contempt. But at this time
6 I don't believe that a contempt action is
7 warranted.

8 **THE COURT:** So the long and short of
9 your response is that we are premature in
10 making the determination today as to whether
11 or not, one, he has refused to testify, and
12 we don't have a trial. Whether he is
13 refusing to testify or is asked or granted
14 immunity because you have asked, your client
15 has taken the Fifth Amendment, so that
16 triggers the response by the government to
17 offer the immunity. So are you saying that
18 at this time your client is refusing to
19 testify today and is withholding that choice
20 of what action to take until the time of
21 trial? Is that what you are telling me?

22 **MR. WISE:** Your Honor, I believe that my
23 client, not to use the word "right" because

1 that doesn't -- that might not be applicable.
2 He has a choice of who to speak to and who
3 not to speak to with regard to this matter.

4 **THE COURT:** At this point. At this
5 point, juncture, yeah.

6 **MR. WISE:** At this point he has a right
7 not to talk to Attorney Zena, if Attorney
8 Zena wants to question him. I believe he has
9 a right not to talk to the prosecutors if he
10 doesn't want to because we are not in trial.

11 **THE COURT:** I understand that. I guess
12 my question to you was are we not premature
13 then in the entertaining the motion of
14 immunity when, in fact, it is not -- it is
15 not ripe for that decision until such time as
16 he is called as a witness for trial, and then
17 at that time we determine whether or not he
18 refuses to testify or he refuses to testify
19 on the grounds of it may cause to incriminate
20 him to some type of criminal liability?

21 **MR. WISE:** Yes, Your Honor.

22 **MS. CANTALAMESSA:** Would defense
23 counsel, Mr. Wise, agree then if he refuses

1 to testify, he is unavailable then?
2

3 THE COURT: At the hearing?

4 MS. CANTALAMESSA: Yes.

5 MR. WISE: I believe the rule speaks to
6 unavailability at trial. There has been no
7 showing that he is unavailable at trial until
8 the jury is impaneled and he at that point
9 says, by the way, I'm moving to Cuba so --

10 THE COURT: Yeah, I agree with you. I
11 just think that what we are doing is going
12 back and forth between a hypothetical, your
13 client saying he is unavailable. Can we
14 agree that if he doesn't testify, he is
15 unavailable? I think that's the issue that
16 we have to determine at trial, not here
17 today.

18 MS. CANTALAMESSA: For the record, Your
19 Honor, did you order Mr. Robinson to testify
20 and did he actually say he is refusing to
21 testify?

22 THE COURT: No.

23 MS. CANTALAMESSA: Or did Mr. Wise say
that?

1 THE COURT: I did that deliberately.
2

3 MS. CANTALAMESSA: Okay.

4 THE COURT: Yeah. Because I think that
5 we have to move to the trial itself before we
6 do this, unless the State is able to offer
7 some evidence of some criminality other than
8 the innuendo of what he may or may not have
9 done, or that he is charged. And at that
10 point I do think that Mr. Zena is right, that
11 his client, because of the effect it may have
12 on him, has the right to know what
13 culpability, if any, that Mr. Robinson has in
14 this event.

15 So the Court is going to hold in
16 abeyance any decision on this matter until we
17 move to a trial date, and we will then resume
18 this conversation at that time. Okay?

19 MS. CANTALAMESSA: Thank you, Your
20 Honor.

21 THE COURT: All right. Thank you very
22 much.

23 MR. WISE: Thank you, Your Honor.

MR. ZENA: Your Honor?

1
2 THE COURT: Yeah.

3 MR. ZENA: There is one other thing. I
4 did not bring this up. It appears it will be
5 our intention, and we have a written
6 document, it will be our intention to
7 withdraw this defendant's previous motion or
8 waiver of right to speedy trial and ask the
9 Court to invoke speedy trial. We understand
10 that if you do make that order, the 90 days
11 starts then. He gets no credit for anything
12 prior. Whether or not --

13 MS. CANTALAMESSA: There is no 90 days
14 after revocation. It's a reasonable
15 timeframe. There is no 90 days, and they are
16 severed counts.

17 MR. ZENA: Excuse me.

18 THE COURT: Go ahead.

19 MR. ZENA: After we make the argument,
20 that it is actually a mathematical formula
21 based on the murder case, we are going to ask
22 that the -- that the waiver of speedy trial
23 be withdrawn. If you determine that will not
be the case and it's a reasonable time,

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that's over. If you determine it does start a new 90 days ticking at that point, then that will start that. But it wouldn't start no matter when until after you made a ruling on the motion.

THE COURT: I understand.

MR. ZENA: I want everyone to know that is our intention.

THE COURT: I think the prosecutor is right when we talk about a reasonable time based upon the case law; but this Court is pretty sensitive to actual numbers, so I would be setting this matter within that time frame.

MR. ZENA: Yes, Your Honor. Thank you, Your Honor.

THE COURT: All right. We are in recess. Thank you.

(WHEREUPON, Court was adjourned.)

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2
3 REPORTER'S CERTIFICATE
4

5 I HEREBY CERTIFY the above and foregoing
6 is a true and correct transcript of all
7 evidence introduced and proceedings had in
8 the hearing of the within-named case as shown
9 by my stenographic notes taken by me during
10 the hearing and at the time the evidence was
11 being introduced.

12 
13 CATHERINE A. BUCK, RPR
14 OFFICIAL COURT REPORTER

15 DATE: 12/16/16